

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LOUISVILLE GAS AND ELECTRIC COMPANY)
and)
BELLSOUTH TELECOMMUNICATIONS, INC.)

CASE NO. 96-246

ALLEGED VIOLATION OF COMMISSION)
REGULATIONS 807 KAR 5:041, SECTION 3 AND)
807 KAR 5:061, SECTION 3)

O R D E R

This matter arising upon the motion of Majorie Poth to intervene as a full party, or in the alternative as a limited intervenor, on the grounds that she has an interest in this proceeding, and it appearing to the Commission as follows:

On June 11, 1996, the Commission initiated this case to determine whether the Louisville Gas & Electric Company ("LG&E") should be assessed a penalty for alleged violations of Commission Regulation 807 KAR 5:041, Section 3. The Commission subsequently expanded the scope of this proceeding to also consider whether BellSouth Telecommunications, Inc. ("BellSouth") should be assessed a penalty for alleged violations of Commission Regulation 807 KAR 5:061, Section 2. The Commission took these actions after its receipt of an Accident Investigation Report which alleged that LG&E and BellSouth facilities were not in compliance with National Electrical Safety Code standards. The Report involved an investigation of the circumstances surrounding the electrocution of F. Nicholas Poth.

Marjorie Poth is the widow of F. Nicholas Poth and is the Administratrix of his estate. She seeks to intervene in this proceeding. She argues that she has an "interest in the investigation and prosecution of the alleged violation of 807 KAR 5:041, Section 3," as a result of her relationship to Mr. Poth.

Commission Regulation 807 KAR 5:001, Section 3(8), governs intervention in Commission proceedings. It provides in part:

If the Commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

Thus the regulation requires a person seeking to intervene to establish either (1) "a special interest" in the proceeding, or (2) that intervention is likely to develop facts and issues which assist the Commission in the case. Mrs. Poth's motion satisfies neither requirement.

The right of intervention in a Commission proceeding broadly parallels the right of intervention under CR 24.01(b). That rule permits a person to intervene in any action in which he has "an interest" and where the disposition of that action may, as a practical matter, impair or impede his ability to protect that interest. The term "interest" under CR 24.01(b) has been defined as a "significantly protectable interest." Philipps, Kentucky Practice, 5th Ed., Civil Rule 24.01.

Mrs. Poth had not demonstrated a special interest in this proceeding. The purpose of this proceeding is to ensure LG&E's and BellSouth's compliance with

Commission regulations. Each member of the public has an equal interest in ensuring such compliance. The Commission, in its role as the enforcer of KRS Chapter 278 and all regulations promulgated pursuant to that Chapter, represents the public interest. See KRS 278.040(1) and (3).¹ Assuming arguendo that F. Nicholas Poth was fatally injured as a result of LG&E's or BellSouth's noncompliance with Commission regulations, that fact does not enhance or enlarge Mrs. Poth's interest or entitle her to intervention.²

The outcome of this proceeding will not greatly affect any civil action which Mrs. Poth may bring against either utility. Unless Mrs. Poth becomes a party to this proceeding, she is not bound by the Commission's findings nor will she be estopped from litigating factual issues which are litigated and decided herein. Pantex Towing Corp. v. Glidewell, 763 F.2d 1241 (11th Cir. 1985). She, therefore, has no stake in the outcome of this proceeding.

Finally, Mrs. Poth has not demonstrated that her intervention as a party is likely to present issues or develop facts that will assist the Commission in fully considering this matter. Her motion is silent on this point.

¹ See also Philipps, Kentucky Practice, 5th Ed., Civil Rule 24.01 at 422 ("[W]here . . . there is a party charged by law with representing his interest, then there will be a presumption that the representation is adequate.").

² The allegations contained in the Accident Investigation Report concern utility facilities which were not directly involved in Mr. Poth's death. Nothing in the Accident Investigation Report indicates that the alleged clearance violation contributed to the accident.

As she has not satisfied the requirements for intervention under Commission Regulation 807 KAR 5:001, Section 3(8), she is not entitled to intervene in this proceeding.³


IT IS THEREFORE ORDERED that Mrs. Poth's Motion to Intervene is denied.

Done at Frankfort, Kentucky, this 15th day of October, 1996.

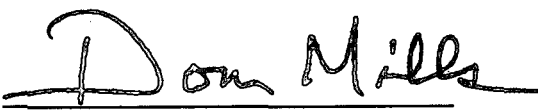
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

³ Notwithstanding the Commission's decision today, the Movant may inspect and request copies of any document in the case record and attend any formal conference or hearing in this case. See KRS 61.872; 807 KAR 5:001, Section 4.